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In re Application of :
BEIER et al :
U.S. Application No.: 10/531,465 :
PCT No.: PCT/EP03/12591 : DECISION ON PETITION
Int. Filing Date: 11 November 2003 :
Priority Date: 12 November 2002 : TO WITHDRAW HOLDING
Attorney Docket No.: BEIE3001/JEK :
For: OBJECT PROVIDED WITH : OF ABANDONMENT
PROTECTED INFORMATION AND :
METHOD FOR PRODUCING SAID :
OBJECT :

This decision is in response to the "Petition to Withdraw Notice of Abandonment" filed 25 August 2006. No fee is required.

BACKGROUND

On 26 September 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a \$130.00 surcharge fee pursuant to 37 CFR 1.492(h) was required. A two-month time limit in which to respond was set with extensions of time available under 37 CFR 1.136(a).

On 24 July 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) for failing to respond to the Form PCT/DO/EO/905 mailed 26 September 2005 within the time period set therein.

On 25 August 2006, applicant filed the instant petition along with a copy of counsel's law firm's "Daily Docket Sheet" for 28 November 2005 and the docket record for the subject application.

DISCUSSION

Applicants claim that the Form PCT/DO/EO/905 mailed 26 September 2005 was never received and have filed a petition to withdraw the holding of abandonment.

The showing required to establish the failure to receive an Office communication consists of: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement.¹

Applicants' statement in the petition satisfy items (1) and (2).

Petitioners have also provided a copy of the law firm docket record for 28 November 2005 and the computer docket record for the above-captioned application. A review of both records verify that the Form PCT/DO/EO/905 mailed 26 September 2005 was not received and docketed. This evidence is sufficient to satisfy item (3).

Applicant has met all of the requirements required to establish nonreceipt of an Office action.

CONCLUSION

For the reasons noted above, applicant's petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 24 July 2006 is hereby **VACATED**.

Applicant must provide a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee of \$130.00 within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time pursuant to 37 CFR 1.136 are available. **Failure to comply will result in the abandonment of this application.**

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for

¹ § 711.03(c) MPEP states, in part:

A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

James Thomson

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